



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Sterling Park Parcel 12, LLC
Registration No. 73725**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1307.D and 10.1-1316.C between the State Air Pollution Control Board (SAPCB) and Sterling Park Parcel 12, LLC, for the purpose of resolving certain violations of Air Pollution Control Laws and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "Facility" means Sterling Park Technology Center, located at 22400 Shaw Road, in Sterling, Virginia.

5. "NOV" means Notice of Violation dated June 11, 2008.
6. "NOx" means Nitrogen Oxides.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a Consent Order.
9. "Permit" means a Virginia Air State Operating Permit ("SOP").
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
11. "SOP" means State Operating Permit.
12. "Sterling Park" means Sterling Park Parcel 12, LLC, a corporation certified to do business in Virginia.
13. "VAC" means the Virginia Administrative Code.
14. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (reference 40 CFR 60, Appendix A).
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et. seq.) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The Facility is a commercial building located in Sterling, Virginia, and is owned and operated by Sterling Park Parcel 12, LLC. The Facility is subject to 9 VAC 5-10-10 and 40 C.F.R. Part 60. The Facility operates three emergency diesel generator (EDG) units manufactured by Cummins Diesel, each nominally rated at 1500 kW electrical outputs and two dual fuel-fired boilers, each rated at 2.4 Million BTU.
2. DEQ conducted an inspection of the Facility on May 22, 2008. During the inspection, DEQ staff confirmed that the generators and boilers on-site and had been operated.
3. Since DEQ had reason to believe that Sterling Park had installed, constructed and operated the facility since April 2006 without a SOP, a Notice of Violation (NOV) was issued to Sterling Park on June 11, 2008 by DEQ citing the following violations:
 - a. Sterling Park failed to obtain a permit prior to construction in accordance with 9 VAC 5-80-1120 (A).

- b. Sterling Park failed to obtain a permit prior to operation of the 3 generators in accordance with 9 VAC 5-80-1210 (D).
 - c. Sterling Park failed to provide to DEQ, notice of construction, anticipated start-up, or actual start-up in accordance with 9 VAC 5-50-50 (A).
4. While not listed in the June 11, 2008 NOV, Sterling Park failed to conduct a visible emissions evaluation (VEE) on the facility's generators within 60 days after achieving maximum production rate at which the facility will be operating but in no event later than 180 days after start-up of the facility in violation of 9 VAC 5-50-30. The VEE requirement is addressed in the conditions set forth in the newly issued Permit.
5. Sterling submitted a complete Form 7 application on October 10, 2008. Included in this application was the information required under 9 VAC 5-50-50 (A).
6. DEQ issued a SOP, registration number 73725, for Sterling Park on March 12, 2009.
7. As detailed in the findings of fact above, DEQ concludes that Sterling Park was found to be in violation of, 9 VAC 5-50-30, 9 VAC 5-50-50 (A), 5-80-1120 (A), and 5-80-1210 (D).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Sterling Park Parcel 12, LLC, and Sterling Park Parcel 12, LLC agrees to pay a civil charge of \$15,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Sterling Park Parcel 12, LLC shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Sterling Park Parcel 12, LLC for good cause shown by Sterling Park Parcel 12, LLC, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Sterling Park Parcel 12, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Sterling Park Parcel 12, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Sterling Park Parcel 12, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Sterling Park Parcel 12, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Sterling Park Parcel 12, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Sterling Park Parcel 12, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sterling Park Parcel 12, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Sterling Park Parcel 12, LLC. Nevertheless, Sterling Park Parcel 12, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - (a) Sterling Park Parcel 12, LLC petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Sterling Park Parcel 12, LLC.

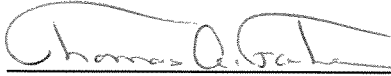
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sterling Park Parcel 12, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

12. Any plans, reports, schedules or specifications attached hereto or submitted by Sterling Park Parcel 12, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Sterling Park Parcel 12, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Sterling Park Parcel 12, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Sterling Park Parcel 12, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this order, and


there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below Sterling Park Parcel 12, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15 day of September, 2009.


Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

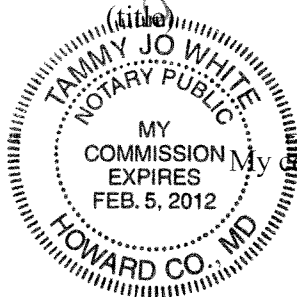
Sterling Park Parcel 12, LLC voluntarily agrees to the issuance of this Order.

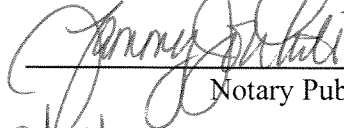
By: 
Mark D. Lerner
Title: _____
Manager
Date: 9/14/09

~~Commonwealth of Virginia~~ state of Maryland
City/County of Howard

The foregoing document was signed and acknowledged before me this 14th day of September, 2009, by Mark D. Lerner, who is
(name)

Manager of Sterling Park Parcel 12, LLC, on behalf of the Corporation.




Notary Public

My commission expires: 2/5/12